COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 18, 2002

PETITION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUA-2002-00002

and

DOMINION NUCLEAR MARKETING II, INC., PLEASANTS ENERGY, LLC, ARMSTRONG ENERGY LIMITED PARTNERSHIP, L.L.L.P., and TROY ENERGY, LLC

For approval of changes to wholesale power service agreements under Chapter 4 of Title 56 of the Code of Virginia and for an exemption of new wholesale power service agreements from the prior approval requirements of Chapter 4 of Title 56 of the Code of Virginia or, in the alternative, for approval of wholesale power service agreements and for expedited consideration

ORDER ON RECONSIDERATION

On January 23, 2002, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company"), Pleasants Energy, LLC ("Pleasants"), Armstrong Energy Limited Partnership, L.L.L.P. ("Armstrong"), Troy Energy, LLC ("Troy") (Pleasants, Armstrong, and Troy are hereinafter referenced as the "Project Entities"), and Dominion Nuclear Marketing II, Inc. ("DNM II") (collectively, "Petitioners") filed a petition for expedited consideration and for approval of certain changes to the existing service arrangements and agreements between Dominion Virginia Power and DNM II and for approval of changes in previously approved agreements between Dominion Virginia Power and two of the Project Entities. In addition,

Dominion Virginia Power and the Project Entities requested an exemption from the prior approval requirement of Chapter 4 of Title 56 of the Code of Virginia or, in the alternative, for approval of new service agreements between Dominion Virginia Power and each of the Project Entities. On February 15, 2002, Dominion Virginia Power filed revisions to the service agreements with the Project Entities to clarify pricing requirements by the Federal Energy Regulatory Commission.

On March 5, 2002, the Commission issued an Order Granting Approval in this case. On March 25, 2002, the Petitioners filed with the Commission a Motion to Amend Petition and Order ("Motion"). The Petitioners moved the Commission to allow the petition to be amended as requested in the Motion, and to enter an amended order making certain determinations under Section 32 of the Public Utility Holding Company Act of 1935 ("PUHCA"), 15 U.S.C.A. § 79z-5a (1997), involving exempt wholesale generators ("EWG"). The Petitioners had not previously requested the Commission to make any determinations under PUHCA in this proceeding.[1]

Petitioners stated that, to enter into the wholesale power agreements, "this Commission and the North Carolina Utilities Commission [must] make, with regard to each agreement, (a) a determination that it has sufficient regulatory authority, resources and access to books and records of the electric utility company and any relevant associate, affiliate or subsidiary company to exercise its duties under PUHCA § 32(k)(2)(A), 15 U.S.C.A. § 79z-5a(k)(2) and (b) a determination that the transaction (i) will benefit consumers; (ii) does not violate any state law (including where applicable, least cost planning); (iii) would not provide the EWG any unfair

[1] Petitioners subsequently withdrew their request for PUHCA findings on the proposed agreement between the Company and DNM II, on advice of counsel that such arrangement does not require a state commission to make any determination under the provisions of § 32(k) of PUHCA, and because DNM II will be pursuing alternate means of marketing its capacity for the longer term.

competitive advantage by virtue of its affiliation or association with Dominion Virginia Power; and (iv) is in the public interest." (Motion at 3.)

On March 26, 2002, the Commission issued an Order Granting Reconsideration and Suspending Order Granting Approval. In that order, the Commission: (1) found that the petition should be amended as set forth in the Motion; (2) found that to amend the Order Granting Approval as requested by Petitioners, we must reconsider that order; (3) treated Petitioners' Motion as a petition for reconsideration pursuant to Rule 5 VAC 5-20-220 of the Commission's Rules of Practice and Procedure, and granted the petition for reconsideration; and (4) suspended the Order Granting Approval of March 5, 2002, pending the Commission's reconsideration.

On April 3, 2002, the Commission issued an Order Permitting Written Comments. No comments were filed by interested persons or entities. On May 3, 2002, the Petitioners filed revised power purchase agreements. On May 10, 2002, Staff filed a motion requesting, and the Commission granted, an extension for Staff to file its report and for Petitioners to file a response to Staff's report. On May 22, 2002, Petitioners filed a response to Staff's motion. On May 24, 2002, Staff filed its report in this matter. On May 31, 2002, Petitioners filed a response to Staff's report.

On June 14, 2002, the Commission issued an Order Requesting Supplemental Comments. We asked Staff and Petitioners to address: (1) any specific unfair competitive advantage to the Project Entities by virtue of their affiliation or association with Dominion Virginia Power; (2) any specific means by which the Commission could detect any unfair competitive advantage if it occurs; (3) any specific means by which the Commission could remedy, and further prevent, any unfair competitive advantage if it occurs; and (4) any other relevant matters for our consideration in determining whether such transactions would provide the EWG any unfair

competitive advantage by virtue of its affiliation or association with Dominion Virginia Power. In addition, we asked Staff and Petitioners to address: (1) whether, and how, Dominion Virginia Power's purchases for resale under the agreements will impact the development of a competitive market; and (2) any other relevant matters for our consideration in determining whether consumers "will benefit" from such transactions.

Staff filed additional comments on June 28, 2002. Staff explains that it did not find there existed any unfair competitive advantages, only that Staff did not know how the Commission could say that none existed relative to wholesale transactions for power not used to serve Virginia jurisdictional retail customers. Staff states that the Commission perhaps could withdraw authorization relative to the Company's purchases of power for its own use, and the Commission can disallow the recovery of costs from retail customers, if the purchase is proven to be imprudent. If a competitive advantage exists, Staff questions whether contracts between the Company and purchasers of the re-marketed power can in any way be affected by this Commission's actions. Staff also states that the Project Entities have a competitive head-start over other EWGs, which may not have utility affiliates with similar wholesale power obligations to fulfill or staffed with similarly experienced power traders. Staff asserts that when the Company serves wholesale customers with power purchased from the Project Entities, instead of its own excess system power, margin sharing with retail customers through the fuel factor will be eliminated. Staff believes that the Company's access to power from the Project Entities, for delivery into the wholesale market, will enlarge the Company's presence in that market and may inhibit wholesale market development.

Petitioners filed supplemental comments on July 10, 2002 ("Supplemental Comments"). Petitioners assert that the terms of the agreements protect against any unfair advantage to the

Project Entities. Pursuant to the pricing provisions of the agreements, the price of power sold to the Company shall be no higher than the hourly locational marginal price established by the PJM Interconnection, LLC, at the PJM Western Hub. As a result, Petitioners state that there will be no special advantage to the Project Entities, and that this applies whether the Company uses the power for system needs or resells the power in the wholesale market. Petitioners also explain that the agreements require Petitioners to maintain, for a period of not less than two years, records of each transaction to ensure that the pricing limitations have been followed. Petitioners note that they addressed enforcement issues in earlier pleadings and have not challenged, in any way, this Commission's continuing role regarding the agreements.

Petitioners also assert in their Supplemental Comments that the agreements are in the public interest, benefit consumers, and promote the development of competition. Petitioners note that the Commission, in this docket, has already found that the agreements are in the public interest, and that such is true whether the Company uses the power for system needs or resells the power. Petitioners urge the Commission to consider the enhanced ability to serve the public that comes from wholesale transactions. Petitioners assert that it is against the public interest, including the interests of Virginia consumers, to limit the Company's ability to operate in wholesale markets. Petitioners explain that greater access provides the Company with the opportunity to operate with more flexibility, reliability, and efficiency, which can provide greater financial strength for the Company, and that customers benefit when the utility providing service to them is financially strong and allowed to operate with the same access to energy markets as others. In addition, Petitioners state that creating new risks as to the authority to resell power would discourage purchases from the Project Entities even for system needs, to the detriment of the Company and its customers.

Petitioners further assert that the development of vibrant wholesale markets is inextricably linked to the development of competitive markets at the retail level. In this regard, Petitioners state that the ability to resell power in wholesale markets is fundamental to full participation in energy markets and to the full development of those markets, and that further development of wholesale markets, by promoting greater transparency and liquidity, enhances the development of competition. Petitioners claim that restrictions on resale are anticompetitive and are damaging in this case, because such would restrict access to available power.

Petitioners' Supplemental Comments also address other issues raised by Staff. For example, the Company states that the agreements will not limit the sharing of margins through the fuel factor. The Company explains that it can, today, purchase power at the PJM Hub from many sources and resell such power off-system, and that allowing purchases for resale will not undermine the Company's current practice of maximizing sales from its generation. The Company also notes that Commission Staff currently monitors the fuel factor. The Petitioners also claim that weakening Virginia Power by restricting its ability to resell power in the wholesale market outside of its service territory, while other regional and national competitors routinely engage in such activities and are unconstrained in their opportunities, is contrary to the goal of promoting the development of competitive markets, the advancement of economic development, and the interests of the Company and its customers. Petitioners assert that the Virginia Electric Utility Restructuring Act encourages strong competition and economic development, and that the proposed agreements are fully keeping with those goals and benefit consumers.

NOW THE COMMISSION, having considered the pleadings and the applicable law, finds as follows. We find that Virginia jurisdictional retail customers of the Company will

benefit from Petitioners' proposal taken as a whole; the Company will have additional sources of generation to serve those customers. We also have a number of concerns. These include potential unfair advantage to the Project Entities, potential detriment to the development of competition in Virginia as a result of possible increased market power by Dominion Virginia Power, the action of the Federal Energy Regulatory Commission in removing an important term from the agreements that we had previously found to be in the public interest and approved in this case, potential impacts on the fuel factor, and how the monitoring that we require in this Order will work in practice.

Pursuant to our statutory duties, we seek to ensure that the agreements remain in the public interest and that the Company's Virginia retail customers are protected. Considering the benefits and the concerns mentioned above as well as others, on balance, we find that the Petitioners carried their burden and that we are able to make the requested PUHCA findings with certain conditions, limits, and monitoring. Accordingly, we will exercise the authority provided to us by PUHCA and exempt the Company and the Project Entities from the federal prohibition against execution of the proposed agreements, upon the following conditions.

First, we will limit our approval to two years and will provide, during that period, that transactions entered into under the agreements may not exceed a two-year term. If the Petitioners find that specific circumstances warrant a transaction exceeding a two-year term, they may file a request with the Commission seeking an amendment to this limitation. In addition, we will direct Staff to monitor the effects of the agreements approved herein on the Company's provision of reliable service to retail customers in the Commonwealth, on the Company's transmission system (including but not limited to its import capability), and on the fuel factor.

The Petitioners will be required to provide the documents and information necessary to conduct such monitoring.

Accordingly, subject to the conditions in this order, and to the findings and conditions in our Order Granting Approval dated March 5, 2002, we find that with regard to Virginia jurisdictional retail customers of the Company and the wholesale power agreements proposed in this case between the Project Entities and the Company: (a) the Commission has sufficient regulatory authority, resources and access to books and records of the electric utility company and any relevant associate, affiliate or subsidiary company to exercise its duties under PUHCA § 32(k)(2)(A), 15 U.S.C.A. § 79z-5a(k)(2); and (b) the transactions (i) will benefit consumers, (ii) do not violate any state law, (iii) will not provide the Project Entities any unfair competitive advantage by virtue of their affiliation or association with the Company, and (iv) are in the public interest.

Accordingly, in addition to our Order Granting Approval dated March 5, 2002, IT IS HEREBY ORDERED THAT:

(1) Our prior suspension of the Order Granting Approval dated March 5, 2002, is hereby lifted.

(2) The Commission Staff shall monitor the effects of the agreements approved herein on Dominion Virginia Power's provision of reliable service to retail customers in the Commonwealth, on the Company's transmission system (including but not limited to its import capability), and on the fuel factor.

(3) The Commission Staff, Dominion Virginia Power, and the Project Entities shall confer to develop the categories of information, included but not limited to information related to off-system sales, necessary for Staff to perform the monitoring activities required in this Order.

(4) The approval granted in this case shall expire on December 31, 2004, such that additional transactions between Dominion Virginia Power and the Project Entities under the agreements approved herein cannot be entered into after December 31, 2004. Transactions entered into prior to December 31, 2004, pursuant to our approval granted herein, may continue until the expiration of the terms of such transactions, which shall not exceed two years. Should Dominion Virginia Power and the Project Entities wish to continue operating under the agreements approved in this case beyond December 31, 2004, prior Commission approval shall be required for such continuation.

(5) This matter is dismissed.